

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 10/519,546 Confirmation No. 2578
Applicant : Trevor Ross Suggate
Filed : August 23, 2005
Group Art Unit : 3671
Examiner : Gary S. Hartmann

Title : MODULAR PLATFORM, WALKWAY OR RAMP
Docket No. : BEL-19148
Customer No. : 088954

APPELLANTS' REPLY BRIEF (37 CFR § 41.41)

Mail Stop Appeal Brief – Patents
Commissioner for Patents
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This Reply Brief is being filed in accordance with 37 C.F.R. §41.41 within two months of the Examiner's Answer that issued in this matter on September 15, 2010. No fees are believed to be due, however, if any fees are due please charge these to our Deposit Account No. 18-0160, Our Order No. BEL-19148.

REMARKS

Applicant maintains all arguments made within the Appeal Brief, in addition to the remarks added below.

The Examiner's Answer (EA), in support of continued claim rejection, relies on Greenwood (US 3,808,757) and the rejection comprises two parts. The first relates to upper leg sections 44a of Greenwood. According to the EA, this component is a moveable member as defined in the claims of the above referenced application. The second relates to a bracing assembly of Greenwood. The bracing assembly comprises the following components: bracing 34 and 36; tie plate 38; struts 56; and detachable connection 58.

UPPER LEG SECTIONS 44A

Mobile home applications are referenced in the EA. In this regard, the EA refers to deck height. The Applicant agrees that Greenwood is designed for different sites and therefore different heights. However, the Applicant respectfully notes that "Set elevation" that the EA recites is used by the Applicant as it relates to a particular site, not multiple sites.

It is argued in the EA that the height of the deck assembly 10 would be adjusted by any manner desired by one skilled in the art. While the Applicant agrees with this principle, the Applicant respectfully disagrees that the desired manner involves the adjustment described in the EA. Contrary to statements of the EA, the Applicant does not assert that this adjustment of the EA is impossible or beyond ordinary skill. But the Applicant does respectfully assert that it would be difficult and impractical and therefore would not be used by one skilled in the art.

Summarizing the Applicant's previous submissions, Greenwood teaches assembly of upper leg sections 44a and support and bracing components recited in the EA to form a pre-assembly structure. The Applicant respectfully submits that this pre-assembly structure is constructed before engagement of lower and upper leg sections 44b and 44a respectively. Adjustment described in the EA would require movement of the pre-assembly structure simultaneously relative to all lower leg sections 44b. In the Applicant's respectful opinion, leg adjustment in Greenwood comprises movement of lower leg sections 44b relative to a propped and static pre-assembly structure.

Furthermore, in the Applicant's respectful opinion upper leg sections 44a do not correspond to the claimed prefabricated moveable member. They are four sub-components of the pre-assembly structure and most structures, including those referenced in the EA, comprise an assembly of components. And the pre-assembly structure which includes the upper leg sections 44a also, in the Applicant's respectful opinion, by definition is not a member. The pre-assembly structure therefore also does not correspond to the claimed prefabricated moveable member.

According to the claims of the above referenced application, an engagement between the prefabricated moveable member and elongate member retains the moveable member to the elongate member while allowing longitudinal movement of the moveable member relative to the elongate member. The Applicant agrees with statements of the EA that this relative movement includes movement of the elongate member relative to a moveable member that is temporarily static. However, the Applicant respectfully submits that the claimed moveable member is moveable. The relative movement therefore also includes movement of the moveable member relative to a static elongate member. For reasons explained above, the Applicant respectfully submits that the pre-assembly structure is not practically moveable for adjustment of the relative positions of upper and lower legs sections 44a and 44b respectively.

The deck assembly 10 appears to be a structure of considerable size. It is therefore the Applicant's opinion that one skilled in the art would recognize that installation of the Greenwood deck assembly 10 at a particular site would involve the following installation steps

1. Construction of the pre-assembly structure as described above
2. Insertion of lower leg sections 44b into corresponding upper leg sections 44a
3. Securing of lower leg sections 44b temporarily relative to upper leg sections 44a in an at least partially retracted position to prevent lower leg sections 44b impairing movement of the pre-assembly structure to its installation position
4. Moving the deck assembly 10 to the installation position and propping it in that position

5. Releasing the lower leg sections 44b for telescopic movement within corresponding upper leg sections 44a
6. Guiding lower leg sections 44b as they slide downwardly out from within corresponding upper leg sections 44a until foot pads 52 contact a supporting surface
7. Detachably securing upper and lower leg sections 44a and 44b using detachable fasteners 48

With respect to these installation steps, the only relative movement of upper and lower leg sections 44a and 44b respectively that relates to adjustment of the combined length of these leg sections is that of step 6. During this relative movement upper leg section 44a is static. In the Applicant's respectful opinion lower leg sections 44b, and not upper leg section 44a, clearly correspond to the claimed moveable member.

Height adjustment disclosed by Greenwood appears to involve holes 50 of lower leg sections 44b. It is in the Applicant's respectful opinion readily apparent to one skilled in the art that further means of adjustment is necessary to enable the deck assembly to be leveled. One possible further means of adjustment would involve drilling additional holes through the upper and lower leg sections 44a and 44b respectively. These additional holes would, in the Applicant's respectful opinion, preferably be drilled on-site. The Applicant respectfully submits that it would be clear to one skilled in the art that such on-site drilling could only be safely carried out with the pre-assembly structure securely supported in the installation position. Lower leg sections 44b could then be adjusted according to step 6 above before drilling additional holes as required. During adjustment of lower leg section 44b and any subsequent drilling, upper leg section 44a is static. As already submitted with respect to the above described installation steps, lower leg sections 44b, and not upper leg sections 44a, clearly correspond to the claimed moveable member.

BRACING ASSEMBLY

The EA essentially agrees with the Applicant's summary of Greenwood in part 1 but disagrees in relation to support provided by strut 56 and tie plate 38. In this regard, the EA confirms that the Examiner did not previously concede that members 56 and 38 of Greenwood do not support paneling 40 but did concede that such

support is not specifically disclosed by Greenwood. According to the EA, it would have been obvious to have supported the deck using members 56 and 38 to increase load bearing capacity.

Referring to the EA, the supporting function of the tie plate 38 is only not positively disclosed because it is so very clearly evident due to its position relative to the deck and relationship with bracing 34 and strut 56. The EA observes that in order to brace the border frame the bracing 34 must be at the same elevation as the frame and must therefore also support the frame.

In reply, the Applicant first respectfully reiterates earlier submissions that Greenwood discloses that the deck rests on the border frame. It does not disclose or teach that the bracing 34 and 36 supports the deck.

Second, the Applicant respectfully notes that according to the disclosure of Greenwood a deck assembly 10 could be constructed using bracing 34 and 36, tie plate 38, struts 56 and detachable connection 58 in a manner that does not result in the deck being supported by the bracing 34 and 36 or the tie plate 38. Such an assembly is in the Applicant's respectful opinion entirely consistent with the disclosure of Greenwood. Furthermore, the Applicant respectfully submits that a skilled person would have no reason not to construct such a deck assembly because there is no suggestion in Greenwood of any corresponding inadequacies, or teaching or suggestion not to do so.

Third, the Applicant refers to assertions of the EA that the aforementioned support is obvious. The Applicant respectfully presumes that in relation to these obviousness assertions the Examiner assumes that the aforementioned support is at least either necessary or beneficial. On the contrary, Applicant respectfully asserts that a deck assembly 10 that does not include the aforementioned support might be entirely satisfactory. It might, for example, be entirely stable and secure, or at least as stable and secure as necessary for the disclosed purpose. The support asserted in the EA could introduce additional complexities in relation to deck assembly components and construction. It could also introduce additional expense.

Fourth, as noted above, according to Greenwood paneling 40 rests on the border frame. There is no suggestion that paneling 40 is attached to the bracing 34 and 36 or tie plate 38. The support described in the EA could adversely affect the support which is specifically disclosed by Greenwood. For example, support via the bracing 34 and 36 or the tie plate 38 might cause the paneling 40 not to be uniformly

supported by the border frame. Alternatively or additionally, this support could inadvertently lift parts of paneling 40 upwardly off the border frame. Concerning an embodiment having a deck formed of a plurality of panels the tie plate 38 could specifically affect centrally positioned panels.

According to the EA, the support it describes requires the bracing 34 and 36 and tie plate 38 to contact the deck. In the Applicant's respectful opinion, support involving such contact could depend on precise details including, for example, in relation to component characteristics and dimensions, and also assembly. Component characteristics possibly include, for example, stiffness of paneling 40. The Applicant respectfully submits that Greenwood does not disclose these details. Therefore, the Applicant respectfully submits that without corresponding know-how concerning relevant deck assembly components or aspects of construction it would be difficult to ensure a Greenwood deck assembly includes the support described in the EA.

It is asserted in the EA that the apparent pivotal nature of detachable connection 58 does not detract from the support described therein. The Applicant does not submit that possible downward pivotal movement of the strut 56 via the detachable connection 58 would necessarily prevent the support described in the EA. But the Applicant does respectfully submit that it is impossible to assert, based on the disclosure of Greenwood, that the detachable connection 58 enables this support. Furthermore, as explained above the Applicant respectfully submits that according to Greenwood it is at least likely that in order for the detachable connection 58 to be capable of providing the aforementioned support component characteristics and dimensions, and also assembly, would require specific characteristics or ranges of values. Otherwise, a certain amount of pivotal movement would result in the bracing assembly at least not providing any substantial support. Any such movement may not however adversely affect bracing by the bracing assembly which is clearly and specifically disclosed by Greenwood.

The EA assumes that the deck assembly 10 would be unsafe without the support described therein. It is explained in the EA that to ensure the deck assembly 10 was safe the need for this support would have therefore been obvious. The recitation of the EA in defense of this support is that Greenwood discloses additional bracing. The Applicant respectfully notes that this disclosure relates though to bracing, not support.

The Applicant refers to assertions in the EA concerning ordinary skill. The Applicant respectfully notes that he does not argue that as a general principle it is beyond ordinary skill to use a bracing assembly similar to that of Greenwood as a structural support. However, Greenwood clearly and specifically describes on the one hand support and the other bracing. In the Applicant's opinion, there are therefore two reasons a skilled person would not understand from Greenwood that in addition to this support and bracing, the bracing assembly should also be used for support. First, there is not any teaching or suggestion in Greenwood to do so, or any apparent shortcomings in not doing so. Second, the aforementioned clear and specific disclosure teaches away from doing so. Therefore, to do otherwise would be going beyond the clear and unmistakable disclosure of Greenwood and reading into that document the support described in the EA (i.e., injecting hindsight bias).

CONCLUSION

In view of the foregoing, it is respectfully submitted that the rejections of claims 2, 9 and 17-29 of the present application are in error and must be reversed, and a ruling from the Board to that effect is therefore respectfully requested.

Respectfully submitted,

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